

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7992 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MAHENDRA HIRALAL SOLANKI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MR AB VYAS ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/03/99

ORAL JUDGEMENT

Grievance of the petitioner in this writ petition under Article 226 of the Constitution of India is that he has been illegally detained under order dated 4.8.1998, Annexure "A" passed by the Police Commissioner, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act, 1985 hence he has prayed that the said

order be quashed and he be released from illegal detention forthwith.

From the grounds of detention, Annexure "B" to the writ petition it appears that because of registration of 7 cases under Bombay Prohibition Act and further because of the statements of two confidential witnesses against the petitioner that the Detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order.

The impugned order has been challenged on the only ground that the activities of the petitioner cannot be said to have been prejudicial for maintenance of public order. This contention implies that the activities of the petitioner that he is bootlegger has not been challenged nor it could be challenged in view of registration of seven offences under Bombay Prohibition Act, as also in view of the statements of two confidential witnesses disclosing bootlegging activity of the petitioner. Thus, the subjective satisfaction of the Detaining Authority that the petitioner is bootlegger does not suffer from any infirmity and requires no interference in this writ petition.

A bootlegger can only be detained when his activities are found prejudicial for maintenance of public order. So far as seven registered offences under Bombay Prohibition Act are concerned, from the grounds of detention it does not appear that on those occasions the petitioner created situation which was prejudicial for maintenance of public order.

So far as the statements of two confidential witnesses are concerned, learned Assistant Government Pleader has argued that because the petitioner was openly moving with knife in his pocket he is not to be released. This contention cannot be accepted for upholding preventive detention under PASA. If the petitioner was frequently and freely moving with open Rampuri knife he could be booked under section 25 of the Arms Act and not that he could be detained under PASA.

Examining the statements of two confidential witnesses it can be said that usual story has been narrated by these two witnesses that on one occasion the petitioner approached the shop of one witness and asked him to keep certain quantity of liquor in his shop. The witness refused, whereupon the petitioner got excited and he beat the witness with kicks and fists on 20.7.1998 at

11.00 a.m. The witness shouted for help whereupon the persons from nearby locality collected. Seeing those persons the petitioner became excited and he chased towards crowd with open Rampuri knife. This incident can be divided into two parts. The first incident was between petitioner and witness and some beating took place but it was incapable of disturbing public order. The second part of the story that the petitioner ran towards crowd with open knife also cannot be said to have created situation prejudicial for maintenance of public order in as much as no injury was caused to any member of the crowd and as such the statement of the first witness was insufficient for reaching subjective satisfaction for the petitioner's creating situation prejudicial for maintenance of public order.

The second witness stated about the incident dated 25.7.199 at 5.00 p.m. In this incident also witness was beaten by the petitioner on the suspicion that he was police informer. On his alarm persons from the nearby locality collected. They were chased by the petitioner with knife. Here also the members of public were not injured. Ofcourse some beating took place in which the petitioner beat the witness but in totality of circumstances from the statement of this witness also it cannot be said that public order was disturbed.

If the activities of the petitioner were not prejudicial for maintenance of public order he could not be preventively detained. The impugned order of detention is therefore illegal and it has to be quashed.

In the result the writ petition succeeds and is allowed. The impugned detention order dated 4.8.1998, Annexure "A" to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt